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SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
				EXAMINER
				GARG, YOGESH C
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1                   UNITED STATES PATENT AND TRADEMARK OFFICE  
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5                   BEFORE THE BOARD OF PATENT APPEALS  
6                   AND INTERFERENCES  
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8                   *Ex parte* BRIAN ALAN GROVE,  
9                   ZAK JAMES EDSON,  
10                  STEVE GROVE,  
11                  and  
12                  ANDREW LEIGH SANDLER  
13

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14  
15                  Appeal 2009-003235  
16                  Application 10/750,052  
17                  Technology Center 3600  
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20                  Decided: September 23, 2009  
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24                  *Before* MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU  
25                  R. MOHANTY, *Administrative Patent Judges*.  
26

27                  CRAWFORD, *Administrative Patent Judge*.  
28  
29

30                  DECISION ON APPEAL

## STATEMENT OF THE CASE

2 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection  
3 of claims 15-21, 51-57, 87-93, and 116-119. We have jurisdiction under 35  
4 U.S.C. § 6(b) (2002).

5 Appellants invented systems and methods for facilitating price  
6 negotiations between a buyer and a seller by a network-based commerce  
7 system (Spec. [0002]).

8           Claim 87 under appeal is further illustrative of the claimed invention  
9   as follows:

87. A method to facilitate operation of a network-based commerce system, the method including:

adjusting a predefined reserve price associated with a listing of an item during a network-based auction price-setting process; and

notifying automatically one or more bidders of the adjustment of the reserve price.

17 The prior art relied upon by the Examiner in rejecting the claims on  
18 appeal is:

19	Holden	US 2001/0032175 A1	Oct. 18, 2001
20	Nishi	US 2002/0161691 A1	Oct. 31, 2002
21	Herschkorn	US 6,691,094 B1	Feb. 10, 2004

22 The Examiner rejected claims 15-18, 21, 51-54, 57, 87-90, 93, and  
23 116-119 under 35 U.S.C. § 103(a) as being unpatentable over Nishi and  
24 Holden; claims 19-20, 55-56, and 91-92 under 35 U.S.C. § 103(a) as being  
25 unpatentable over Nishi, Holden, and Herschkorn.

26 We AFFIRM.

## ISSUES

2 Did the Appellants show the Examiner erred in finding that a  
3 combination of Nishi and Holden renders obvious notifying one or more  
4 bidders of the adjustment of the reserve price, as recited in independent  
5 claims 15, 51, 87, and 116, because Holden teaches away from notifying  
6 bidders of the reserve price?

7 Did the Appellants show the Examiner erred in finding that a  
8 combination of Nishi and Holden renders obvious notifying one or more  
9 bidders of the adjustment of the reserve price, as recited in independent  
10 claims 15, 51, 87, and 116, because the Examiner has not provided an  
11 adequate reason for modifying Nishi?

## FINDINGS OF FACT

### *Specification*

15 Appellants invented systems and methods for facilitating price  
16 negotiations between a buyer and a seller by a network-based commerce  
17 system (Spec. [0002]).

Nishi

20 Nishi discloses buyers' auction data are exchanged with auction  
21 center equipment 6 and the organizer equipment 12 via the Internet by using  
22 equipment 20 such as personal computers (the buyer equipment). The  
23 buyers' equipment 20 and the assessors' equipment 16 are connected to the  
24 Internet 8 and the auction center equipment 6. Data submitted at the buyer

1 equipment 20 is sent to and shown on the assessor equipment 16. Data  
2 submitted at the assessor equipment 16 is sent to and shown on the buyer  
3 equipment 20 ([0071]).

4 Screens 34 on organizer equipment 12, assessor equipment 16, and  
5 buyer equipment 20 include information field 38 and input area 40. Buyers  
6 can enter their bid on input area 40. Assessor equipment and buyer  
7 equipment 20 show the status of bidding, and “reserve price modification” is  
8 requested and the session status is shown on assessor equipment ([0097];  
9 Figs. 5-6).

10 The assessor and sellers can click on the “reserve price modification  
11 button” on the input area 40 ([0101]).

12 When the reserve price is modified, the goods are sold at the bidding  
13 price that the reserve price modification specified. Then the current session  
14 and cycle is closed ([0172]).

15

16 *Holden*

17 Holden discloses an on-line auction system with an opening price that  
18 determines the starting price of the auction. The reserve price is a bidding  
19 limit used to prevent a sale at a catastrophically low price. The opening  
20 price is shown on the bidding screen. The reserve price is not shown  
21 ([0028]).

22 Throughout the auction, a variety of auction events will trigger  
23 automatic e-mail messages to the users authorized for that auction ([0082];  
24 Claim 28).

1 PRINCIPLES OF LAW

2 *Obviousness*

3 A reference may be said to teach away when a person of ordinary  
4 skill, upon examining the reference, would be discouraged from following  
5 the path set out in the reference, or would be led in a direction divergent  
6 from the path that was taken by the applicant. *In re Gurley*, 27 F.3d 551,  
7 553 (Fed. Cir. 1994).

8 One cannot show non-obviousness by attacking references  
9 individually where the rejections are based on combinations of references.  
10 *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

11

12 *Claim Construction*

13 While the specification can be examined for proper context of a claim  
14 term, limitations from the specification will not be imported into the claims.  
15 *CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1231 (Fed. Cir.  
16 2005).

17

18 ANALYSIS

19 *Teaching Away*

20 We are not persuaded of error on the part of the Examiner by  
21 Appellants' argument that a combination of Nishi and Holden does not  
22 render obvious notifying one or more bidders of the adjustment of the  
23 reserve price, as recited in independent claims 15, 51, 87, and 116, because  
24 Holden teaches away from notifying bidders of the reserve price (App. Br.  
25 10-16; Reply Br. 5-12). Holden discloses that the reserve price is not shown  
26 on the bidding screen. However, the fact that the reserve price is not shown

1 does not mean Holden teaches away from showing the reserve price. A  
2 teaching away requires discouragement. *See In re Gurley*, 27 F.3d at 553.  
3 The cited portions of Holden do not discourage showing the reserve price.  
4 Indeed, independent claims 15, 51, 87, and 116 only recite notifying one or  
5 more bidders of the *adjustment* of the reserve price, and not notifying the  
6 one or more bidders of the reserve price itself. *See CollegeNet, Inc. v.*  
7 *ApplyYourself, Inc.*, 418 F.3d at 1231.

8

9        *Adequate Reason for Modifying*

10        We are not persuaded of error on the part of the Examiner by  
11        Appellants' argument that a combination of Nishi and Holden does not  
12        render obvious notifying one or more bidders of the adjustment of the  
13        reserve price, as recited in independent claims 15, 51, 87, and 116, because  
14        the Examiner has not provided an adequate reason for modifying Nishi  
15        (App. Br. 10-16; Reply Br. 5-12). Nishi discloses that assessor's equipment  
16        16 includes a "reserve price modification button." Data submitted at the  
17        assessor's equipment 16 is sent to the buyer's equipment 20. While it is true  
18        that Nishi does not specifically disclose that reserve price modification is  
19        sent to the buyer's equipment 20, Holden discloses that a variety of auction  
20        events will trigger automatic e-mail messages to the users authorized for that  
21        auction. The reserve price adjustment/modification may be such an event, as  
22        one of ordinary skill in the art would set automatic triggers to  
23        automatically notify one or more bidders about change in the reserve price  
24        because this enables efficient and real time communication of change in the  
25        ongoing auction terms, even including a termination of an auction due to an  
26        adjustment of the reserve price and which all bidders should know (Ex. Ans.

1 6-8). Accordingly, all arguments that Nishi alone does not disclose the  
2 aforementioned aspects of independent claims 15, 51, 87, and 116 are  
3 unpersuasive, because it is the combination of Nishi and Holden in view of  
4 the above rationale that renders obvious the aforementioned aspects. *See In*  
5 *re Keller*, 642 F.2d at 426.

6 The Appellants assert that Nishi does not disclose disclosing the  
7 reserve price to the buyer's equipment 20. Once again, however, such a  
8 recitation is not set forth in the claims. *See CollegeNet, Inc. v.*  
9 *ApplyYourself, Inc.*, 418 F.3d at 1231. Independent claims 15, 51, 87, and  
10 116 merely recite notifying one or more bidders of the *adjustment* of the  
11 reserve price, and not notifying the one or more bidders of the reserve price  
12 itself. The rationale for modifying Nishi to notify the one or more bidders  
13 about the change in reserve price has been established by the Examiner as  
14 set forth above.

15 The Appellants also assert that the Examiner's proffered combination  
16 of Nishi and Holden does not render obvious continuing the auction after the  
17 reserve price has been modified/adjusted, thus defeating the Examiner's  
18 rationale for combining Nishi and Holden. However, such a recitation is not  
19 set forth in the claims. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d  
20 at 1231. Independent claims 15, 51, 87, and 116 merely recite notifying one  
21 or more bidders of the adjustment of the reserve price, not that the auction  
22 must subsequently continue. Accordingly, a termination of the auction still  
23 meets the aforementioned recitations, as long as the one or more bidders are  
24 informed of the modification/adjustment of the reserve price that terminates  
25 the auction.

## CONCLUSION OF LAW

2 On the record before us, Appellants have not shown that the Examiner  
3 erred in rejecting claims 15-21, 51-57, 87-93, and 116-119.

## DECISION

6 The decision of the Examiner to reject claims 15-21, 51-57, 87-93,  
7 and 116-119 is affirmed.

8 No time period for taking any subsequent action in connection with  
9 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

**AFFIRMED**

15 hh  
16  
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